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SUBJECT: SLOVENIA: ELIMINATING BACKLOGGED COURT CASES AND

REFORMING THE JUDICIARY

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**¶1.** Summary: The Slovenian court system is plagued with backlogs -- over 600,000 cases are currently pending in the courts. GOS reform efforts have taken on greater urgency as the European Court of Human Rights (ECHR) has begun fining Slovenia for failure to guarantee the right to a trial within a reasonable time. While the judiciary has embraced some proposed reforms, concerns over preservation of judicial independence have increased resistance to other measures, such as wage restructuring and replacing life-tenure for judges with limited terms. Ultimately Slovenia will have to implement a broad array of reforms to improve cooperation between prosecutors and police and to enable the judiciary to manage cases efficiently. End summary.

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Background: Failed Reforms and Mounting Backlogs  
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**¶2.** Despite years of efforts to reform Slovenia's judicial system, many cases still await resolution in Slovenian courts. As of December 2005, the Slovenian courts recorded 524,016 unresolved cases and more than 613,000 cases when including unresolved misdemeanors. Though backlogged cases have decreased from approximately 667,000 in 2004, the numbers remain large and problematic for a country of roughly 2 million people.

**¶3.** Since Slovenian independence in 1991, the courts have steadily carried a small backlog of cases, but the number of pending cases rose significantly during a period of unsuccessful judicial reform in 1995-1997. Later in 2001, further attempts at reform were made through the Supreme Court's Hercules Project. The Hercules Project sought to solve the problem by shifting backlogged cases to better-functioning courts and providing the courts extra payment for the extra work. Despite some success with individual courts, the reforms of the Hercules Project failed to produce a substantial reduction in the number of pending cases nationwide.

**¶4.** The large backlog that remains today contributes to a sense of public distrust in the courts and has become a symbol of the need for real and lasting judicial reform. Recently, the reduction of the backlogs has become increasingly urgent due to international criticism, including rulings against Slovenia from the European Court of Human Rights (ECHR).

15. Slovenia became a member of the Council of Europe in 1993 and ratified the European Convention on Human Rights in 1994. Despite the substantial backlogs, it was not until October of 2005 in the case of Lukenda v. Slovenia that the ECHR ruled against Slovenia for violating the right to a fair trial, as guaranteed by Article 6 of the Convention. In Lukenda v. Slovenia, the ECHR declared that delays in the Slovenian judicial process violated the human rights guarantee to a trial within a reasonable time. The applicant in the case, Franjo Lukenda, had suffered a work-related injury for which he filed a claim for an increase in disability benefits. He brought his case to the ECHR after pursuing the claim in Slovenian courts for over five years. Given the relatively low degree of complexity of the case, the ECHR found that five years was an excessive duration and constituted a violation of the Convention.

16. Since Lukenda v. Slovenia, the ECHR has ruled against Slovenia on over 50 similar cases, with several hundred still pending. Despite the gravity of the violations and the imposing number of backlogged cases, Slovenia's problem is not unique. A number of countries, including Belgium, Croatia, France, Greece, Italy, and Slovakia, have previously been found in violation of the right to a trial within a reasonable time. Like these countries, Slovenia must regard the ruling as a call for lasting reform and repair of the judicial system.

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Proposals for Reform from the Jansa Government  
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17. Seeing the backlogged cases as the heart of the problem of judicial delay, the Ministry of Justice (MOJ) responded to the ECHR rulings with a plan to reduce the number of pending cases. In December 2005, the MOJ announced the Lukenda Project, a plan to eliminate the backlogs by 2010. Unlike Hercules, the Lukenda Project is an expansive plan which will combine the efforts of a wide range of actors involved in the judicial process including the National Assembly's Committees for Interior and Justice, the National Council, The Ombudsman for Human Rights, the Bar Association of Slovenia, NGOs, and Courts across the country. The Lukenda Project reforms are designed to improve the operation of Slovenian courts. Measures include the employment of 500 auxiliary court staff, improved working conditions for judges and court officials, rewards for judges who successfully eliminated backlogs from their courts, and upgraded courtroom technology. Other announced reforms promise the implementation of a system to accelerate and simplify resolution of small claims, the creation of a unified statistical database, and the establishment of a coordination mechanism between the MOJ, the Court Council, and the Supreme Court in order to better follow the progress of the courts.

18. The Lukenda reforms are in the beginning stages and have not yet produced measurable results. However, similar efforts to improve courtroom operations have already achieved preliminary success on a small scale. In February of 2006, the Ljubljana District Court, among the most overburdened courts in Slovenia, reported a decrease in backlog by 5% for 2005, despite a 4.2% increase in the caseload that year. The Ljubljana District Court's Vice President, Marjan Pogacnik attributed the court's success to legislative change, which provided for financial and staff improvements. The court has since applied for additional staff.

Criticism of Proposed Reforms of Term-Limits and Wage Restructuring

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¶19. Shortly after the Lukenda ruling, the Justice Minister called for cooperation from courts in the creation of plans to reduce the backlogs. This effort to collaborate with judicial bodies has helped the MOJ win support from within the judicial system for many of the aforementioned reforms. However, other proposed reform measures of the Lukenda Project have been highly contentious and a great deal of tension has developed between the legal community and the GOS. While all agree on the necessity of eliminating the backlogs, disagreement over the fundamental causes of the courts' problems and the best means of repairing them has created controversy.

¶10. Debate centers on the role of judges and their responsibility for the backlogs. Some reformers blame the lack of review and accountability of judges who have life tenure for the courts' problems. Proposals for term limits for judges have the support of the MOJ and many legislators. The Minister of Justice has presented proposals calling for five-year term appointments instead of lifetime appointments for some new judges. However, the heads of the Supreme Court, the Judicial Council, and the Judge's Association, as well as a number of political parties opposed the proposal. These opponents view the term-limits as a threat to judicial independence and criticize the extreme nature of the measure, which would require a change in the Constitution. They also cite existing mechanisms in place to remove incompetent judges. Moreover, opponents of the limits object that lifetime tenure is not the cause of the backlogs. Rather they blame insufficient funding, poor working conditions, and lack of technological support. Alongside a statement of opposition to the MOJ's plan, the heads of the Supreme Court called for an increase in full-tenure judgeships and administrative staff, as well proposals for reorganization of the judicial structure. The Supreme Court has not, however, put forth its own proposal for reorganization.

¶11. Debate likewise surrounds proposals that include a program of wage restructuring for judges. In December 2005, amid cooperative efforts between court officials and the MOJ in the development of the Lukenda Project, the MOJ suggested implementing a system of bonuses for productive judges, which the Prime Minister also supported. The atmosphere of goodwill did not last, however. More recent proposals, including one from the Prime Minister, have called for wage restructuring to incorporate a decrease in wages for judges with

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problematic backlogs.

¶12. Like term-limits, the plans for wage restructuring aim to increase judicial accountability and improve the performance of the courts. However, proposals for wage decreases incited strident resistance from judges and the implementation of wage restructuring was stayed by a Constitutional Court decision. The execution of the Law on Judges, the Law on System of Salaries in Public Sector, and the Decree on Salaries of Officials that contain provisions to reduce judicial salaries has been temporarily withheld while the court reviews whether the laws will interfere with the division of powers, and the preservation of judicial independence.

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Comment  
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¶13. The reforms of the Lukenda Project aim for widespread, long-lasting change. With cooperation between the GOS and the judiciary there is great potential for success in this transformation. As a new generation of judges and lawyers emerge, so does an opportunity for real reform to take root.

This will not occur, however, without a commitment to change from within the judicial community and support for the process from all involved. Though the GOS may continue to adopt reforms, the changes will have to be implemented from within the judicial system and will require sustained and widespread support for reformative measures, especially given the long-term nature of the project.

¶14. Further, while judicial backlogs are themselves a significant cause for alarm, it is important that the GOS considers the possibility that the build-up of pending cases is symptomatic of deeper, systemic problems. While backlogs affect the capacity of courts and judges, simple reduction of the number of pending cases may not be a sufficient goal for guaranteeing the right to a fair trial. Slovenia must also remain focused on building a judiciary capable of managing cases without delay, both in civil cases like Lukenda, and in criminal proceedings, where delay may allow a guilty party to go uncharged or unconvicted.

¶15. Though the Slovenian cases brought to the ECHR have been almost entirely complaints about delay in civil matters, the need for judicial reform exists in the criminal system as well. On 14 June, the State Prosecutor Barbara Brezigar reported that criminal activities by unknown perpetrators are rising, while the number of charges filed against known criminals is declining. The report paints a troublesome picture of the decreasing ability of the legal system to prosecute crime. Brezigar further expressed a concern over difficulties in communication between police and prosecutors, suggesting that police may be overburdened by processing petty crime. Such systemic problems as a lack of coordination between police and prosecutors suggest the need for systemic solutions, to address not only courtroom aspects of judicial reform but also the entire law enforcement system.

¶16. The European Council has laid out potential measures for systemic judicial change in "Recommendation No. R (87) Concerning the Simplification of Criminal Justice." Some recommendations are relevant to Slovenia's situation, including the simplification of procedures for minor offenses, the limited use of "guilty pleas" and the reduced practice of judicial investigation, where appropriate. The European Council has also published a note on successful measures taken by countries that have achieved judicial reform. Some simple practices, such as the courtroom use of binding deadlines for filing papers and penalties for parties who misuse the system, could be useful expedients in Slovenian courts. Additionally, more fundamental changes have been successfully implemented in other countries, including the switch from an inquisitorial system to an adversarial system, and the development of a program for alternative dispute resolutions, or out of court settlements. Though the suitability of specific measures must be carefully examined by Slovenia itself, serious exploration of these recommendations for substantial change will be essential to building a functioning, sustainable judicial system.

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